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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/875,476	06/06/2001	Thomas M. Cowan	71445	8724

22242 7590 06/13/2006

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EXAMINER	
LONSBERRY, HUNTER B	
ART UNIT	**PAPER NUMBER**
2623	

DATE MAILED: 06/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/875,476	COWAN ET AL.	
	Examiner	Art Unit	
	Hunter B. Lonsberry	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 March 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3 and 5-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3 and 5-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 3/27/06 have been fully considered but they are not persuasive.

Applicant argues that claim 4 has not been rejected. Amendment pages 8 and 9.

Regarding applicants argument, claim 4 was rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,828,993 to Hendricks in view of U.S. Patent 5,600,573 to Hendricks, in the previous office action. Please see heading 4 of the prior action. In the current office action and as a result of applicant's amendments, the Examiner has relied upon the teachings found in heading 4 of the previous office action.

Applicant argues that that claims '1-3 of '573 do not in any way teaches or suggest panelist identification means, means for receiving panelist identification information or a market research computer responsive in any way to panelist identifying information. According the patent claims do not teach or suggest limitations of claims 19 and 22 and no prima facie case of obviousness has been established. (Amendment page 9).

Regarding applicants argument, the '573 patent claim 1 discloses a market research computer system which is coupled to a plurality of sales collection units and

reports response signals which provide an indication of consumer behaviour and panelist identifying information (purchase information), therefore the corresponding panelist identification means are the consumer's viewing receivers disclosed on column 15, lines 55-58, means for receiving panelist identification is the plurality of product sales collection units disclosed on column 15, lines 50-63, and the corresponding market research computer is the market research computing system found on column 15, line 64-column 16, line 2. Therefore, the double patenting rejection is proper.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 19-21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6,941,573.

Although the conflicting claims are not identical, they are not patentably distinct from each other because they are different definitions or descriptions of the same

subject matter, varying breadth. In particular, Application claim 19 is a broader recitation of claim 1 of U.S. Patent No. 6,941,573.

Claims 20-21 correspond to respectively to claims 2-3 of U.S. Patent No. 6,941,573.

3. Claims 22-24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6,941,573.

Although the conflicting claims are not identical, they are not patentably distinct from each other because they are different definitions or descriptions of the same subject matter, varying breadth. In particular, Application claim 22 is a broader recitation of claim 1 of U.S. Patent No. 6,941,573.

Claims 23-24 correspond to respectively to claims 2-3 of U.S. Patent No. 6,941,573.

Allowance of claims 19-24 would result in an unjustified time-wise extension for the monopoly previously granted for claims 1-3 of Patent 6,941,573, therefore obviousness-type double patenting is appropriate.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-3, and 5-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,828,993 to Hendricks in view of U.S. Patent 5,600,573 to Hendricks.

Regarding claim 1, Hendricks discloses in figure 1, television distribution system 200 for delivering a plurality of channel signals in separated TV channels to a plurality of cable television subscribers in a geographic area (column 4, lines 31-40) comprises,

a cable distribution head end comprising 208:

a plurality of normal channel signal sources for producing normal TV channel signals to be delivered to subscribers (column 6, lines 29-61) ;

a source of a substitute channel signal to be substituted for at least one normal channel signal (column 6, lines 52-column 7, line 13, the CAP selects channels and substitute channels, and enables for local programming to be substituted);

signal distribution circuitry (satellite receive dishes, column 7, lines 47-55) for receiving the normal channel signals and the substitute channel signal and for combining the received channel signals into a spectrum of channels on a plurality of distribution trunks 210 (column 7, lines 55-65, column 8, lines 7-30),

the spectrum of channels on less than all of the plurality of distribution trunks including the substitute channel signal (column 8, lines 7-30, the cable headend reformats the received signals, reallocates them to different frequency ranges, and substitutes programming); and

means for generating 209 a plurality of substantially identical copies of the spectrum of channels of each distribution trunk and the distribution (column 8, lines 7-30) system comprises:

means for connecting 210 the substantially identical copies of the channel spectrum of each distribution trunk to different substantially contiguous zones of the geographic area (figure 4, region bits 926, column 8, lines 7-30, column 16, lines 2-5).

Hendricks '933 fails to disclose wherein the portion of the subscribers is market research panelists and each zone includes a plurality of panelists.

Hendricks '573 discloses a packaging application which reports market research information from users by analyzing viewer requests for programming and program ratings (column 10, lines 39-60) in order to create a programming lineup which reflects user interests.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Hendricks '993 to utilize the market research information of Hendricks '573 for the advantage of creating a programming lineup which reflects user interests.

Regarding claim 2, Hendricks discloses that the means for connecting 210 connects the spectrum of channel signals from one of the distribution trunks to zones of the community separated from one another by zones connected to others of the distribution trunks (each set top box is located in a separate area from one another thus a separate zone) and selected to demographically represent the community for market research purposes (column 6, lines 13-54, market demographics and ratings are utilized to determine which programs are to be packaged for each region and for different STB 220).

Regarding claim 3, Hendricks discloses that the zones connected to a distribution trunk are selected to demographically represent the community for market research purposes (column 6, lines 18-58).

Regarding claim 5, Hendricks discloses that connecting means 210 may be fibre optic cabling (column 5, lines 7-13).

Regarding claim 6, Hendricks discloses a number of first signal combiners 208 which are equal to the number of trunks 210, each first signal combiner receiving as inputs first channel modulated normal signals for which no signal substitution is performed (column 6, lines 51-61) and second channel modulated signals including normal signals and at least one substitute signals (column 6, line 51-61).

Regarding claim 7, Hendricks discloses that the first and second modulated signals may be distinct packages from one another (column 6, line 51-61).

Regarding claim 8, Hendricks discloses a video switch apparatus 209 for receiving as inputs normal channel signals and substitute channel signals and selectively connecting the input signals to a plurality of outputs ports of the video switch (column 8, lines 7-26) and circuitry for combining the signals into a plurality of cable TV channel sections equal to the number of distribution trunks (column 8, lines 7-13).

Regarding claim 9, Hendricks discloses the use of channel modulators equal to the number of trunks for each channel of the second channel modulated signals (column 8, lines 7-20).

Regarding claim 10, see claim 8.

5. Claims 11-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,828,993 to Hendricks in view of U.S. Patent 5,600,573 to Hendricks in further view of U.S. Patent 5,285,272 to Bradley.

Regarding claim 11, Hendricks discloses the use of a video switch to connect normal and substitute signals onto the first and second conductors (column 8, lines 6-24) and allows for programming to be assigned to a new channel frequency.

Although Hendricks discloses shifting programming to a different frequency, the combination of Hendricks '933 and '573specifically fails to disclose a plurality of channel modulators each connected to an output of the video switch.

Bradley discloses in figure 3, a number of modulators 32 each connected to the output of the video switch (column 5, lines 19-35) allowing for the channels to be frequency shifted to a new channel and providing additional flexibility when more channels of programming exist than available channels for broadcasting.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify the combination of Hendricks '933 and Hendricks '573 to utilize the modulators of Bradley for the advantage of additional flexibility when more channels of programming exist than available channels for broadcasting.

Regarding claim 12, Hendricks '933 discloses a television distribution system in which programs are packaged, assigned channels, and local programs may be inserted into a channel.

The combination of Hendricks '933 and '573, fails to disclose a plurality of first signal conductors each conveying a single channel, at least one second signal conductor that provides a substitute channel, a switched combiner means to receive signals from the first and second conductors and selectively connects signals from the first and second conductors to the distribution trunks.

Bradley discloses a plurality of first signal conductors 26 each conveying a single channel (column 5, lines 6-15, 43-46), at least one second signal conductor

which provides a substitute channel (column 5, lines 19-29, when there are more VCRs than available channels, the inputs for the channel are switched amongst the VCRs), a switched combiner (control line 32 in conjunction with combiner 42) means to receive signals from the first and second conductors and selectively connects signals from the first and second conductors to the distribution trunks (column 5, lines 19-49, the outputs from the modulators 32 are switched when there are more VCRs than channels onto a fixed channel frequency), thus allowing for customization of the programming content to be presented to the user.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify the combination of Hendricks '933 and '573 to utilize the channel switching and customization features of Bradley, for the advantage of further customizing the presentation of programming content to the user.

Regarding claim 13, Bradley is relied upon to teach a switched combiner unit (control line 32 in conjunction with combiner 42), which provides signals to distribution trunks 46 (figure 3).

Regarding claim 14, Bradley is relied upon to teach the use of an RF switch (column 5, lines 19-30).

Regarding claim 15, Hendricks '933discloses the use of a video switch to connect normal and substitute signals onto the first and second conductors (column 8, lines 6-24).

Bradley is relied upon for teach the use of the video switch.

Regarding claim 16, Hendricks '933 discloses that substitute programming (local programming) may be selectively provided to a predetermined channel (column 8, lines 14-23).

Bradley is relied upon for teach the use of the video switch.

Regarding claim 17, Hendricks '933 is relied upon to teach the use of a frequency agile modulator, which modulates substitute signals to a predetermined channel (column 8, lines 6-23).

Bradley is relied upon for teach the use of the video switch.

Regarding claim 18, Hendricks is relied upon to teach demodulating the normal channel signals and means for connecting the demodulated signals as inputs to the cable trunk (column 8, lines 7-13).

Bradley is relied upon for teach the use of the video switch.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent Reissue 33,808 to Wright: Cable Television with Multi-Event Signal Substitution.

U.S. Patent 5,374,951 to Welsh: Method and System for Monitoring Television Viewing.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hunter B. Lonsberry whose telephone number is 571-272-7298. The examiner can normally be reached on Monday-Friday during normal business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on 571-272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HBL

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